

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

CLARENCE BUCHANNON

PETITIONER

VS.

STATE OF ALABAMA

RESPONDENT

RECEIVED

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DEBRA P. H.  
U.S. DIST.  
MIDDLE DI.

CASE NUMBER

CC-79-008

CC-87-230

CC-90-146

MOTION TO SECURE JURISDICTION.

COMES NOW THE ABOVE STYLED PETITIONER "CLARENCE BUCHANNON" AND FILES THIS HIS "MOTION TO SECURE JURISDICTION" PURSUANT TO "ARTICLE III OF THE UNITED STATES CONSTITUTION" AND THE "LEGISLATURE ACTS OF CONGRESS" PURSUANT TO "TITLE 224I USC" AND THE AUTHORITY OF INSURANCE CORP. OF LR, LTT, V. COMPACINE DES BANRITES DE GUINCE 456 US 694 701 102 s ct 2099 72 LED 2d 492 (1982), AND IN SUPPORT OF SAME THIS PETITIONER WILL SHOW UNTO THIS HONORABLE COURT THE FOLLOWING TO WIT.

I. JURISDICTION

THE PETITIONER "CLARENCE BUCHANNON" CONTENDS THAT THE JURISDICTION IS VESTED IN THIS HONORABLE COURT BY "ARTICLE III OF THE UNITED STATES CONSTITUTION" AND "TITLE 224I USC"

2. PROCEDURAL HISTORY

THE PETITIONER "CLARENCE BUCHANNON" WAS FORMALLY INDICTED BY THE LEE COUNTY GRAND JURY IN IT'S WINTER 1979 SESSION FOR THE OFFENSE OF "BURGLARY 2nd DEGREE" IN VIOLATION OF "TITLE 13A-7-6 (a)" "CODE OF ALABAMA (1975)". THE PETITIONER WAS ALSO FORMALLY INDICTED BY THE LEE COUNTY GRAND JURY IN IT'S MAY 1987 SESSION FOR THE OFFENSE OF "THEFT OF PROPERTY 2ND DEGREE" IN VIOLATION OF "TITLE 13A-8-4 (a) (1)" "CODE OF ALABAMA (1975)" ALSO THE PETITIONER WAS FORMALLY INDICTED BY THE LEE COUNTY GRAND JURY IN IT'S JANUARY 1990 SESSION FOR THE OFFENSE OF "THEFT OF PROPERTY 2ND DEGREE" IN VIOLATION OF "TITLE 13A-8-4 (a) (1)" "CODE OF ALABAMA (1975)"

THEN ON MAY 2, 1979 THE PETITIONER ENTERED A PLEA OF GUILTY TO THE OFFENSE OF BURGLARY 2ND DEGREE IN VIOLATION OF "TITLE 13A-7-6 (a)" "CODE OF ALABAMA (1975)"  
CASE NUMBER CC-79-008

AND ON MAY 18, 1987 THE PETITIONER ENTERED A PLEA OF GUILTY TO THE OFFENSE OF "THEFT OF PROPERTY 2ND DEGREE" IN VIOLATION OF "TITLE 13A-8-4 (a) (1)" "CODE OF ALABAMA (1975)"  
CASE NUMBER CC-87-230

THEN ON APRIL 6, 1990 THE PETITIONER ENTERED A PLEA OF GUILTY TO THE OFFENSE OF "THEFT OF PROPERTY 2ND DEGREE" IN VIOLATION OF "TITLE 13A-8-4 (a) (1)" "CODE OF ALABAMA (1975)"  
CASE NUMBER CC-90-146

THE PETITIONER DID NOT APPEAL THESE CONVICTIONS TO THE ALABAMA COURT OF CRIMINAL APPEALS

3. FEDERAL ISSUE PRESENTED FOR REVIEW

(A) WHETHER THE TRIAL COURT HAD "SUBJECT MATTER JURISDICTION" OF THE ABOVE STYLED CASES

4. ARGUMENT

THE PETITIONER "CLARENCE BUCHANNON" ARGUES THAT THE TRIAL COURT WAS WITHOUT JURISDICTION TO RENDER THE JUDGEMENT OR TO IMPOSE THE SENTENCE IN CASE NUMBERS CC-79-008 CC-87-230 AND CC-90-146 FOR THE FOLLOWING REASONS.

CASE NUMBER CC-79-008

THE PETITIONER ARGUES THAT EXHIBIT A A COPY OF THE ORIGINAL INDICTMENT IN CASE NUMBER CC-79-008 CHARGING THE PETITIONER WITH THE OFFENSE OF "BURGLARY 2ND DEGREE" IN VIOLATION OF "TITLE 13A-7-6 (a)" "CODE OF ALABAMA (1975)" IS VOID FOR THE FOLLOWING REASONS.

THE PETITIONER ARGUES THAT THIS INDICTMENT FAILS TO INCLUDE ANY OF THE STATUTORY ELEMENTS LISTED AT "TITLE 13A-7-6 (a) (1)" "CODE OF ALABAMA (1975)"

THE PETITIONER ARGUES THAT THIS INDICTMENT EXHIBIT A FAILS TO CHARGE THE OFFENSE OF BURGLARY 2ND DEGREE IN VIOLATION OF "TITLE 13A-7-6 (a)" "CODE OF ALABAMA (1975)"

THE PETITIONER ARGUES THAT EXHIBIT B AND EXHIBIT C COPIES OF THE ORIGINAL INDICTMENTS IN CASE NUMBERS CC-87-230 AND CC-90-146 CHARGING THE PETITIONER WITH THE OFFENSE OF "THEFT OR PROPERTY 2ND DEGREE" IN VIOLATION OF "TITLE 13A-8-4 (a)(1) CODE OF ALABAMA (1975)" ARE VOID FOR THE FOLLOWING REASONS.

THE PETITIONER ARGUES THAT THESE INDICTMENTS EXHIBIT B AND EXHIBIT C ARE VOID ON THEIR FACE E, AS THESE INDICTMENTS CHARGE THE PETITIONER WITH THE OFFENSE OF "THEFT OF PROPERTY 3RD DEGREE" IN VIOLATION OF "TITLE 13A-8-5 (a)" "CODE OF ALABAMA (1975)" AS THE MONEYTARY VALUE OF THE PROPERTY LISTED IN EXHIBIT B \$50.00 WHICH IS CLEARLY THEFT OF PROPERTY 3RD AND THE MONEYTARY VALUE LISTED IN EXHIBIT C \$101.00, WHICH IS ALSO THEFT OF PROPERTY 3RD DEGREE

THE PETITIONER ARGUES FURTHER THAT, AN INDICTMENT THAT FAILS TO ALLEDGE EACH AND EVERY MATERIAL ELEMENT OF AN OFFENSE FAILS TO CHARGE THAT OFFENSE UNITED STATES V. LONDON 550 F2d 206, 211 (5TH CIR. 1979), AND AN INDICTMENT THAT FAILS TO STATE AN OFFENSE WILL NOT SUPPORT A JUDGEMENT OF CONVICTION MAYS V. CITY OF PRATTVILLE; 402 so 2d 1114 1117 (ALA. CRM. APP. 1981).

THE PETITIONER ARGUES THAT THE PRESENT CLAIM PRESENTS TWO (2) DISTINCT ARGUMENTS BEFORE THIS HONORABLE COURT 1) WHETHER THIS HONORABLE COURT HAS JURISDICTION TO CONSIDER THE PETITIONER'S MOTION UNDER "ARTICLE III OF THE UNITED STATES CONSTITUTION" AND 2) WHETHER THE TRIAL COURT HAD "SUBJECT MATTER JURISDICTION" OF THESE CASES

THE PETITIONER ARGUES THAT FEDERAL COURTS ARE COURTS OF LIMITED JURISDICTION DERIVING THEIR POWER SOLOLY FROM "ARTICLE III OF THE UNITED STATES CONSTITUTION" AND FROM THE "LEGISLATURE ACTS OF CONGRESS" THUS THEY CANNOT DERIVE POWER TO ACT FROM THE ACTIONS OF THE PARTIES BEFORE THEM, AND THE PARTIES ARE INCAPABLE OF CONFERRING UPON FEDERAL COURTS A JURISDICTION FOUNDATION THEY OTHERWISE LACK SIMPLY BY WAIVER OR PROCEDURAL DEFAULT, SEE "USC CONST. ART 3 I ET SEQ"

THE PETITIONER ARGUES THAT, SINCE LACK OF JURISDICTION OF A FEDERAL COURT TOUCHING THE "SUBJECT MATTER" OF THE LITIGATION CANNOT BE WAIVED BY THE PARTIES, THIS HONORABLE COURT MUST EXAMINE THE PETITIONER'S CONTENTION LATIN AM. PROPERTY & GAS INS. CO. V. HI-LIE MARINA INC. 887

THE PETITIONER ARGUES FURTHER THAT THIS COURT IS BOUND TO ANSWER AND ASSURE ITSELF OF JURISDICTION EVEN IF THE PARTIES FAIL TO RAISE THE ISSUE INSURANCE CORP. OF LTD 456 US at 702 AS A COURT WILL RAISE LACK OF "SUBJECT MATTER JURISDICTION" ON IT'S OWN MOTION FITZEGARLD 760 F2d at 1251 THEREFORE THIS HONORABLE COURT NOT ONLY HAS THE POWER BUT ALSO THE OBLIGATION AT ANYTIME TO INQUIRE THAT JURISDICTION DOES NOT EXSIST, ARISES CITING PHILBROOK V. GLODGETT 421 US 707 95 s ct 1893 44 LED 2d 525 (1975), CITY OF KEMOSHA V BRUNC 412 US 507 93 s ct 2222 37 LED 2d 109 (1973).

WHEREFORE PREMISES CONSIDERED PETITIONER MOVES THIS HONORABLE COURT TO ACQUIRE JURISDICTION OF THIS CAUSE PURSUANT TO "ARTICIE III OF THE UNITED STATES CONSITUTION" AND "TITLE 2241 USC"

DONE THIS THE 31<sup>ST</sup> DAY OF JANUARY 2006

RESPECTFULLY SUBMITTED

Clarence Buchannon  
CLARENCE BUCHANNON  
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